

Defendant's

Exhibit

A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

ROBERT NOVAK d/b/a PETS
WAREHOUSE.COM,

Plaintiff,

ORDER

CV 01-3566 (DRH) (WDW)

-against-

ACTIVE WINDOW PRODUCTIONS, et al.,

Defendants.

X

WALL, Magistrate Judge:

Before the court is a letter motion by the defendants to compel the plaintiff to respond to their First Request for Production of Documents and for sanctions. On July 2, 2002, the parties appeared for a conference, at which time the defendants raised the question of whether Mr. Novak, as an individual, is the appropriate plaintiff in this action, or whether it must be prosecuted by the corporate entity involved. To help resolve the issue, the court ordered expedited discovery as to the plaintiff's corporate identity. In response, the defendants served the plaintiff with their First Request for Production of Documents seeking, among other things, business certificates for Mr. Novak's entities, tax returns, corporate records, lawsuit information, and a licensing agreement. The plaintiff objected to several of the requests and opposes the motion to compel.

The court has reviewed the plaintiff's responses, as well as his objections to the requests, and finds that the responses are inadequate. The court agrees with the defendants that the business certificates, corporate records and licensing agreements are relevant to the issue regarding the true party in interest. Accordingly, the defendants' motion to compel is granted to the extent it seeks such documents. The plaintiff shall provide the defendants with any documents in his possession responsive to these requests on or before September 11, 2002.

The defendants' motion is denied to the extent it seeks to compel tax returns or lawsuit information, without prejudice to renewal at the September 20, 2002 conference. It is not entirely clear to the court whether the tax returns are only relevant to the proposed second amended complaint and the companion case, or if the lawsuit information is relevant to the pleading in effect at this time. The defendants' motion for sanctions is also denied.

Dated: Central Islip, New York
August 28, 2002

SO ORDERED:

WILLIAM D. WALL
United States Magistrate Judge

TOTAL P.02

**Defendant's
Exhibit
B**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT NOVAK d/b/a PetsWarehouse.com,

X
Notice of Motion
and Motion

Plaintiff

CV 01-3566

against

ACTIVE WINDOW PRODUCTIONS, INC.
MARK ROSENSTEIN, CYNTHIA S. POWERS,
DAN RESSLER, JARED WEINBERGER,
THOMAS BARR, "JOHN DOE" and "MARY DOE",

Defendants

X

PLEASE TAKE NOTICE, that upon the Summons and Complaint, the
Amended Complaint, the Memorandum of Law submitted herewith, the affirmation of
Robert L. Folks dated October 24, 2002, the affirmation of Cynthia A. Kouril dated
October 24, 2002 and the exhibits attached thereto, and upon all of the other papers,

proceedings and prior Orders heretofore had in this action, Defendants ACTIVE
WINDOW PRODUCTIONS, INC. and MARK ROSENSTEIN, by and through its

undersigned counsel will move this Court before the Honorable William D. Wall

Magistrate Judge at the United States Courthouse, 100 Federal Plaza, Central Islip, New
York 11722,

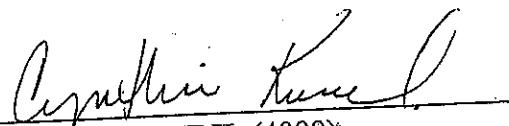
on November 1, 2002 at 2:00 o'clock in the forenoon of that day or as soon
thereafter as it can be heard, to compel production of documents and responses to
deposition questions or alternatively and for an Order pursuant to Rule 26(d) of the

Federal Rules of Civil Procedure determining that the facts in issue in the court ordered
expedited discovery process and for sanctions pursuant to Rule 37 of the Federal Rules of
Civil Procedure.

PLEASE TAKE FURTHER NOTICE, pursuant to Rule 6(d) and (e)
opposing affidavit(s) may be served not later than one day prior to the hearing date of this
motion or not less than four days prior if served by mail.

PLEASE TAKE FURTHER NOTICE, pursuant to Rule 5(b)(2)(B) that
this firm does not consent to service of process by electronic means.

Dated: October 24, 2002
Melville, New York



CYNTHIA A. KOURIL (4899)
ROBERT L. FOLKS & ASSOCIATES, LLP
Attorney for Defendants Active Window
Productions, Inc. and Mark Rosenstein
510 Broad Hollow Road, Suite 305
Melville, New York 11747
(631) 845-1900
fax # (631) 845-8779

TO:

Robert Novak
Plaintiff Pro Se
1550 Sunrise Highway
Copiague, New York 11726

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT NOVAK d/b/a PetsWarehouse.com,

X

Motion to
Compel Discovery

Plaintiff,

-against-

CV 01 3566

ACTIVE WINDOW PRODUCTIONS, INC.,
MARK ROSENSTEIN, CYNTHIA S. POWERS,
DAN RESLER, JARED WEINBERGER,
THOMAS BARR, "JOHN DOE" and "MARY DOE",

Defendants

X

Defendants ACTIVE WINDOW PRODUCTIONS, INC. and MARK

ROSENSTEIN, (hereinafter "AWP" and "Rosenstein" or collectively "moving defendants") upon the annexed affirmations of Cynthia A. Kouril, Esq., and exhibits, the affirmation of Robert L. Folks, Esq., the memorandum of law, the pleadings and all prior papers, proceedings and orders heretofore had in the above captioned action, hereby moves this court as follows:

1. For an order compelling the production of documents, including tax returns as specified in moving defendants' First Request for Production of Documents.
2. For an order compelling the answers and/or responsive answers to questions posed at plaintiff's deposition conducted September 18, 2002.
3. For an order imposing sanctions pursuant to Rule 37 (a)(3), (b) and (c) of the Federal Rules of Civil Procedure requiring plaintiff to pay to moving defendants reasonable attorneys' fees incurred as a result of failure to disclose including

evasive and incomplete disclosure, in accordance with the schedule of fees and disbursements contained in the Affirmation of Robert L. Folks annexed hereto.

4. Additionally or alternatively an order pursuant to Rule 37

(b)(2)(A) that the matter regarding this Court's prior orders of July 2, 2002 and August 28, 2002, *to wit*, "whether Mr. Novak, as an individual, is the appropriate plaintiff in this action, or whether it must be prosecuted by the corporate entity involved", be conclusively established for the purposes of the action in accordance with the claim of the moving defendants, that Mr. Novak is not the true party in interest.

5. Additionally or alternatively an order pursuant to Rule 37 (b)(2)(c)

striking the plaintiff's pleadings.

6. Additionally or alternatively an order pursuant to Rule 37 (b)(2)(b)

refusing to allow plaintiff to oppose moving defendants claim that one or more corporate entities rather than Robert Novak, are the true plaintiff(s) in interest.

7. Such other and further relief as this court may deem just and

proper.

Dated: October 24, 2002
Melville, New York



CYNTHIA A. KOURIL (4899)
ROBERT L. FOLKS & ASSOCIATES,LLP
Attorney for Defendants Active Window
Productions, Inc. and Mark Rosenstein
510 Broad Hollow Road, Suite 305
Melville, New York 11747
(631) 845-1900
fax # (631) 845-8779

Defendant's Exhibit C

BEFORE: WILLIAM D. WALL

DATE: 12/5/02

UNITED STATES MAGISTRATE JUDGE

TIME: 10 a.m.

DOCKET NO. CV 01-3566

ASSIGNED JUDGE: Hurley

CASE NAME: Novak v. Active Window Productions

CIVIL CONFERENCE

Initial _____ Status _____ Settlement _____ Pretrial _____

Other Motion _____

APPEARANCES: Plaintiff Robert Novak

Defendant Cynthia Kouril

SCHEDULING:

1. The next _____ conference will be held on _____

THE FOLLOWING RULINGS WERE MADE:

Pending before the court are three motions. Rulings were made on the record and can be found in the transcript of today's proceedings. In summary, the motions were disposed of as follows:

- 1) Plaintiff's motion for a protective or confidentiality order dated September 19, 2002, and defendants' opposition dated October 18, 2002: the motion for a protective/confidentiality order was granted. Defendants were directed to prepare an order and circulate it to plaintiff.
- 2) Defendants' motion to compel dated October 24, 2002, and plaintiff's opposition dated November 25, 2002: the motion to compel was also granted, subject to production under the terms of the confidentiality order.
- 3) Plaintiff's cross-motion for declaratory judgment dated November 12, 2002, and defendants' opposition dated November 13, 2002: this motion was withdrawn without prejudice to renewal before Judge Hurley at the conclusion of discovery.

Finally, a referee will be appointed to preside over the continued deposition of plaintiff. A separate order will issue when the referee has been appointed.

SO ORDERED

**Defendant's
Exhibit
D**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Docket#
ROBERT NOVAK, : 01-CV-3566
d/b/a Pets Warehouse.com, :
Plaintiff, :
:-----
- versus - : U.S. Courthouse
: Central Islip, New York
ACTIVE WINDOW, et al., :
Defendant : December 5, 2002
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM D.WALL
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff: Robert Novak, Pro Se
1550 Sunrise Highway
Copiague, New York 11726

For the Defendant: Cynthia Kouril, Esq.
Robert L. Folks & Associates
510 Broad Hollow Road
Melville, New York 11747

Official Transcriber: Rosalie Lombardi

Transcription Service: Transcription Plus II
823 Whittier Avenue
New Hyde Park, N.Y. 11040
(516) 358-7352

Typist: Linda Ferrara

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

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1 THE CLERK: 01-CV-3566, Novak v.

2 Active Window.

3 Can I ask you to please state your
4 appearances?

5 MS. KOURIL: Cynthia Kouril for
6 defendant Mark Rosenstein and Active Window
7 Publications.

8 MR. NOVAK: Robert Novak, plaintiff.

9 THE COURT: Good morning, folks.

10 MR. NOVAK: Good morning.

11 THE COURT: Please speak directly into
12 the microphones because we're trying to get a
13 good recording of this, in case we need the
14 transcript as we go forward.

15 We've scheduled and rescheduled the
16 status conference and in the interim have
17 several motions that have been filed.

18 And I just want to note preliminarily
19 that I am extremely disturbed by both sides in
20 this case and the conduct of this litigation.

21 This clearly represents the very worst
22 of what can happen in the course of litigation
23 and should not happen in this court. I think
24 your conduct, Mr. Novak at the deposition and
25 in connection with some of these motions is

Proceedings

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1 absolutely ridiculous. And counsel, your
2 motion to a great extent is incomprehensible.
3 I mean, I -- to give me transcript references
4 to 50 pages of transcript, which one is just
5 like the other, does absolutely no good to me,
6 not to delineate exhibits with Exhibit tabs
7 -- I'm fumbling through this stuff.

8 I'm trying to resolve these motions to
9 help you do your litigation and all you are
10 doing is making it more difficult for me. So,
11 enough --

12 MS. KOURIL: I apologize, your Honor.

13 THE COURT: Enough is enough.

14 I'm going to deal with these seriatim.
15 The earlier motion is the defendant's motion
16 to compel, I think, the production of certain
17 documents and answers to depositions.

18 Is that correct, Ms. Kouril?

19 MS. KOURIL: Yes, sir.

20 THE COURT: Okay.

21 Having gone through the motion and
22 having my clerk spend a great deal of time
23 going through the motion, we can't figure out
24 what it is that you want. So, maybe you could
25 shed some light on that.

proceedings

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1 MS. KOURIL: I'll try to. We believe
2 -- we have a good faith belief based upon our
3 own intent -- independent attempts at
4 investigation through publicly available means
5 that in point of fact Mr. Novak has engaged in
6 a process whereby he incorporates various
7 corporations, uses these various corporate
8 names, uses his individual names, uses the
9 names of family members, uses information
10 relating to these family members, in an
11 attempt to manipulate the Court system to
12 prevent defenses that would otherwise be
13 available to us and to mislead the Court and
14 the public about the true nature of the
15 ownership; who are the parties in interest?

16 And that he has done that not only in
17 this case but in other cases and that he has
18 evidently embarked upon a program of frivolous
19 litigations. I found -- I think there was 17
20 litigations in Suffolk County alone.

21 THE COURT: Well, that's a great
22 speech but what does that have to do with my
23 question, which is what is --

24 MS. KOURIL: Well --

25 THE COURT: I ordered expedited

Proceedings

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1 discovery in this case for the very simple,
2 which I thought was simple and straightforward
3 proposition as to whether or not Mr. Novak was
4 the proper party plaintiff in this case.

5 MS. KOURIL: Precisely.

6 THE COURT: It was limited to that
7 purpose. We now have three motions based on
8 that one simply ruling just to provide for
9 expedited discovery.

10 MS. KOURIL: Right.

11 And you may recall that in an earlier
12 motion to compel discovery, I had asked for,
13 among other things, tax returns. The reason
14 being if you want to know who the party in
15 interest is, you follow the money.

16 At that time, you denied the portion
17 relating to the tax returns with leave to
18 renew. And part of it is that I want to trace
19 the money. And in order to trace the money, I
20 need tax returns, I need corporate records and
21 we didn't ask for records from the
22 corporation. We asked for records that
23 Mr. Novak possessed, as opposed to the
24 corporation's own records because Mr. Novak
25 tells us that these are closely held family

Proceedings

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1 companies that pay him money in cash. So,
2 there's no record for me to trace other than
3 in the tax returns.

4 I would like identifying information.
5 I can't trace transactions without accurate
6 identifying information and the information in
7 the bankruptcy court, the information that is
8 available from other public sources is
9 conflicting. I am not even sure I have the
10 right date of birth for him.

11 THE COURT: You what?

12 MS. KOURIL: I'm not even sure I have
13 the right date of birth. I don't -- as I say,
14 I find him with several different social
15 security numbers, different names. I can't
16 trace this man without information.

17 THE COURT: So, let me try it for a
18 third time then, what is it that you want?

19 MS. KOURIL: Tax returns, date of
20 birth, aliases, social security number.

21 THE COURT: Why are you entitled to
22 his social security number?

23 MS. KOURIL: Because I can't trace
24 these transactions and these other litigations
25 without information that conclusively

Proceedings

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1 establishes that I am talking about the right
2 person.

3 Or alternatively, that he can't offer
4 those things at trial or to the summary
5 judgment motion. He can either not offer it
6 at all or tell me now because I can argue off
7 of what I have if I know that I am not going
8 to be surprised later when he decides to put
9 the information in.

10 THE COURT: Mr. Novak?

11 MR. NOVAK: The information regarding
12 the date of birth was withheld because of the
13 notoriety --

14 THE COURT: I don't care about the
15 notoriety. You started the lawsuit. When you
16 start the lawsuit and you're seeking damages
17 in millions of dollars from a number of
18 defendants, okay, you put a lot of things in
19 play. You put your identification in play,
20 you put your corporate entities in play, you
21 put that type of information in play and you
22 have a very simple choice when you start a
23 lawsuit. If you don't want to do that, don't
24 start the lawsuit.

25 MR. NOVAK: I had no reservation in

Proceedings

8.

1 doing it, your Honor. The reservation I had,
2 if you recall, as I asked, prior to the
3 examination for a confidentiality agreement
4 which was declined initially.

5 At the end of that hearing on the last
6 page of that transcript he said, "Yes, I'll
7 give it to you. Then he turns around he
8 doesn't give it to me; okay?

9 If I had the confidentiality agreement
10 between us, they would have received 99
11 percent of what they wanted, more than likely.
12 I have no reservation in bringing forward
13 documents or bringing forward documents for
14 the Court's eyes only.

15 But I am the Robert Novak that owns
16 the trademark. I am the Robert Novak. There
17 is only one. The investigative report that
18 Ms. Kouril did was from an investigator that
19 was only licensed seven months in the state of
20 New York. So, he did an inadequate job in the
21 information that he got was really wrong.

22 Second of all, they extended that
23 investigative report to my wife and son, which
24 was totally uncalled for. They have nothing
25 to do with this case.

Proceedings

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1 THE COURT: I mean those are -- that's
2 basically both a motion to compel, as well as
3 the cross-motion for the protective order or
4 for a confidentiality agreement and I'm going
5 to resolve both in the following manner.

6 I am going to grant the plaintiff's
7 application for a protective order or a
8 confidentiality agreement and provide that he
9 make the information available, requested by
10 the defendant pursuant to that confidentiality
11 agreement in a continued deposition and the
12 production of documents.

13 And I am going to appoint a referee
14 who is going to conduct the deposition -- not
15 conduct, who is going to preside at the
16 deposition with my full authority to make
17 rulings on this issue.

18 And the cost of that referee will be
19 born by either both the parties or one of the
20 parties after the conclusion of the
21 deposition, which I will then determine.

22 But this is going to stop. I am not
23 going to engage in 15 and 20 motions over
24 every ridiculous piece of either information
25 or state of the litigation, which could be

Proceedings

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1 resolved in a much simpler way. It's just not
2 going to happen and I'm not going to permit
3 it.

4 So, since you can't do it yourselves,
5 I am going to have a special referee do it and
6 it's going to be costly and it's going to cost
7 you money. But if that's what you want to do,
8 that's what we're going to do.

9 Lastly, we've got a motion -- and I'll
10 issue an order to that effect. I'm not going
11 to give it to you now.

12 I don't know what this is and I'm not
13 being cute with you, Mr. Novak. I realize
14 you're proceeding pro se, although you
15 certainly do seem to have a degree of
16 sophistication that exceeds that of our normal
17 pro se litigant.

18 But as a cross motion for declaratory
19 judgment and that's made in connection with
20 the motion that the defendants made to compel.
21 Is that right?

22 MR. NOVAK: Yes, your Honor. I was
23 attempting to close the issue of the discovery
24 and close the issue of this entire three or
25 four months that we've been going back and

Proceedings

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1 forth over the straw man, the straw tax return
2 that's not going to show them anything. That
3 tax return cannot indicate anything. I mean,
4 I --

5 THE COURT: I think you're probably
6 right.

7 MR. NOVAK: I mean it's just that as
8 you had originally said in the beginning of
9 the hearing, this was supposed to be
10 expedited. I anticipated an examination of 30
11 minutes. I didn't anticipate five hours,
12 okay? And I don't think the Court did either.

13 THE COURT: I did.

14 MR. NOVAK: And I think this is a
15 fishing expedition and I think it's
16 harassment. And I thought that --

17 THE COURT: Well, the defendants might
18 very well, you know, make the same argument
19 that you're bringing numerous lawsuits --

20 MR. NOVAK: Well --

21 THE COURT: Let me finish -- and
22 constantly amending the complaint to add
23 parties and allegations, some of which on
24 their face are specious, might also be
25 harassment.

Proceedings

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1 MR. NOVAK: Can I address that
2 briefly?

3 THE COURT: Yes.

4 MR. NOVAK: If it was so frivolous,
5 why did people settle? Why did people pay?
6 They did it because there was guilt on the
7 defendant's part.

8 THE COURT: Maybe they did it because
9 they didn't want to incur the cost of further
10 litigation or further counsel fees or maybe
11 they couldn't afford to litigate it. Maybe
12 they just wanted to get you off their back.

13 MR. NOVAK: I don't believe so.

14 THE COURT: Well, I don't know.

15 MR. NOVAK: Well, I'm -- Judge, you
16 know, this is my opinion but I thought that
17 bringing this to a head through a declaratory
18 request would perhaps end the issue because I
19 think that the prima facia evidence of who
20 owns the trademark and who licenses the
21 trademark is overwhelming to their request of
22 discovery.

23 Well, it may very well be. I don't
24 know. I don't think it's procedurally correct
25 but be that as it may, since it's in the

Proceedings

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1 nature of a dispositive motion, it has to be
2 made to Judge Hurley because all dispositive
3 motions have to be made to the district court
4 judge assigned to the case and then what you
5 have to do is follow his motion practice which
6 my recollection is that he requires a
7 premotion conference and a few other things,
8 and he's got scheduling requirements in that.

9 I would suggest to you, however, that
10 it might be at best premature.

11 MR. NOVAK: Okay.

12 THE COURT: it might also be
13 inappropriate but at best, I think it might be
14 premature. And what I would suggest to you,
15 strictly a suggestion, because you can make
16 the motion if you want, is that you withdraw
17 the motion without prejudice to renew it and
18 let us wrap up this discovery issue with the
19 referee who will make those determinations.
20 We'll then have all the discovery in the case
21 and then if you think you're entitled to that,
22 then go ahead and make the motion.

23 MR. NOVAK: I'll agree to that; sure.

24 THE COURT: So I am going to deem your
25 cross motion withdrawn then.

Proceedings

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1 MR. NOVAK: Without prejudice.

2 THE COURT: Correct.

3 I'm going to issue an order, as I
4 said, that resolves those two motions with the
5 appointment of a referee. I'll have the
6 referee contact you and schedule your further
7 deposition. And that deposition will be
8 conducted pursuant to a confidentiality
9 agreement that the defendant shall prepare and
10 you will obviously review.

11 And I'm trying to think of the best
12 way to handle it in terms of the additional
13 documents you're requesting.

14 MR. NOVAK: Well, if I may perhaps
15 save additional motions by the defense, I
16 don't have any documents. I've answered that.

17 THE COURT: You don't have any what?

18 MR. NOVAK: Pertaining to the
19 corporation. I don't maintain them. I'm not
20 an officer.

21 THE COURT: Okay. But you realize in
22 having said that that should this matter ever
23 come to the point of a trial, that you would
24 be precluded from offering any documents that
25 you claim you don't have now.

Proceedings

15

1 MR. NOVAK: I have no reason to have
2 them.

3 THE COURT: No, I know. But don't --

4 MR. NOVAK: Am I misunderstanding?

5 THE COURT: No, I think you're just
6 trying to be a little bit cute and --

7 MR. NOVAK: No.

8 THE COURT: -- what I am suggesting to
9 you is you tell me you don't have them because
10 you're not an officer of the corporation. The
11 suggestion is that somebody else has them. I
12 just don't want you to be misled. If you
13 don't produce them because you don't have
14 them, fine but that you're position.

15 But they don't come into evidence ever
16 in this case. So, at trial, you don't call a
17 secretary of one of the corporations who all
18 of the sudden miraculously appears with the
19 corporate documents.

20 Keep in mind your role in this case,
21 Mr. Novak. You're the plaintiff. You started
22 the lawsuit. The burden of proof is on you;
23 okay? You've got a certain not only discovery
24 obligations but you have other obligations.
25 If you don't want to produce certain documents

Proceedings

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1 that are properly -- if they are properly
2 called for, fine. But once you choose that
3 pattern, they are not coming into evidence in
4 this case.

5 So, the idea of I don't have them but
6 at trial, I'm calling Joe Blow, secretary of
7 the corporation, and he has all the corporate
8 records and he's going to produce them,
9 they're not coming into evidence.

10 MR. NOVAK: Okay. Now I understand
11 what you're saying but can I just for
12 clarification purposes -- wouldn't information
13 from --

14 THE COURT: And I didn't -- I'm sorry,
15 you interrupted me and I chastised you for it
16 and I'm interrupting you and I apologize.
17 However, let me just note this in passing.

18 I read the deposition, okay? And
19 throughout the deposition your answers were
20 evasive, your answers attempted to do this
21 very thing, draw fine line distinctions
22 between whether it's me or someone else or
23 this corporation or not.

24 That is not how litigation is
25 conducted in this courthouse. And should you

Proceedings

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1 choose to continue in that and I get a report
2 back from special referee that you've done
3 that, I'll impose sanctions, not only
4 monetarily but I'll preclude the admission of
5 evidence that you've been evasive about in
6 responding to.

7 Do we understand each other?

8 MR. NOVAK: I understand what you said
9 but trust me, that was my not intent at all.
10 I never intended to hamper the questions. I
11 really didn't --

12 THE COURT: I wasn't at the
13 deposition, okay? I read it.

14 MR. NOVAK: I understand.

15 THE COURT: And my reading it and I've
16 probably read I don't know how many thousands
17 of depositions in my day, that's how it read
18 to me but that's why I'm -- in part, that's
19 why I am appointing a referee. The referee
20 will tell me.

21 MR. NOVAK: As a last follow up,
22 wouldn't the defense have to subpoena those
23 corporate records?

24 THE COURT: I don't know what -- I
25 mean, we're talking generically here,

Proceedings

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1 corporate records. I don't know what they're
2 referring to.

3 MR. NOVAK: In other --

4 THE COURT: But if it's a corporation
5 that's a party to this lawsuit, no. All they
6 have to do is demand it. If it's corporations
7 controlled by you and that you should have
8 access to the documents, no, all they have to
9 do is demand it. If it's a third party, a
10 non-party -- excuse me, a non-party to this
11 case, an independent person that has nothing
12 to do with the litigation, yes, then they have
13 to subpoena them.

14 MR. NOVAK: The corporations are
15 family owned but not by myself. That's really
16 what the crux of the issue is here.

17 THE COURT: They can't determine that
18 because you don't answer the questions or give
19 them the documents they're entitled to.

20 MR. NOVAK: All right, I understand.

21 THE COURT: But the referee's going to
22 determine that.

23 MR. NOVAK: Okay. We'll get it done.

24 THE COURT: Everybody understand?

25 MS. KOURIL: I have one question,

Proceedings

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1 your Honor, about the --

2 THE COURT: Okay.

3 Answer my question first. Does
4 everyone understand?

5 MS. KOURIL: Oh, what you just said?
6 Yes, absolutely.

7 MR. NOVAK: Yes, sir.

8 THE COURT: Yes?

9 MS. KOURIL: About the confidentiality
10 agreement, I think I heard you say that the
11 defense is going to prepare it.

12 THE COURT: Yes.

13 MS. KOURIL: What do you envision the
14 parameters of that agreement being?

15 THE COURT: That the information be
16 kept confidential, obviously. Your --

17 MS. KOURIL: From my client?

18 THE COURT: No.

19 MS. KOURIL: Mr. Novak does not want
20 me sharing information with my client.

21 THE COURT: Well, I don't care what
22 Mr. Novak wants or doesn't want. The standard
23 confidentiality --

24 MS. KOURIL: That's why I am asking
25 though.

Proceedings

20

1 THE COURT: -- agreement, the breath
2 of it would be attorneys and parties and not
3 beyond that but keep in mind that if your
4 client disseminates the information -- you
5 know what's going to happen here? Because you
6 think you need documents which I don't think
7 you really need --

8 MS. KOURIL: Right.

9 THE COURT: -- okay, he's entitled to
10 that confidentiality. There's no question
11 about it. So, you're going to prepare a
12 confidentiality agreement and you're going to
13 enter into it. And he's going to give you
14 certain information. That information is
15 going to become public. When it becomes
16 public, you get the next lawsuit over breach
17 of the confidentiality agreement.

18 MS. KOURIL: That is my -- one of my
19 fears.

20 THE COURT: I don't think that's a
21 fear. That's what is going to happen.

22 MS. KOURIL: I have one other
23 question. When you say limited to the
24 parties, it's the parties in this action.

25 THE COURT: Right.

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1 MS. KOURIL: Not in the related
2 actions.

3 THE COURT: No, this action.

4 MS. KOURIL: Okay.

5 THE COURT: I don't feel --

6 MS. KOURIL: I just want to be
7 absolutely clear.

8 MR. NOVAK: Can I explore that just
9 one step further? What do you mean by that in
10 this action?

11 THE COURT: What do you mean by what?

12 MR. NOVAK: Because --

13 THE COURT: What do I mean by what?

14 MR. NOVAK: No, not you, Judge. I'm
15 sorry. Ms. Kouril, in other words, you don't
16 want to keep it confidential to the defendants
17 in the other action? Is that what you're
18 saying?

19 THE COURT: Don't address any
20 questions to Ms. Kouril. I will handle it. I
21 think I was fairly clear that the
22 confidentiality agreement, the documents
23 produced and the information provided, is
24 limited to the attorneys, to Ms. Kouril and
25 her firm and the parties to this action, the

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1 defendants in this action.

2 MR. NOVAK: And are we extending that
3 they cannot be disseminated on the internet?
4 I mean that's really what --

5 THE COURT: They can't be disseminated
6 beyond the parties. If they disseminate it on
7 the internet, then that's the next lawsuit. I
8 know that's where it's coming.

9 MR. NOVAK: I think --

10 THE COURT: So, we're going to be here
11 for years doing this and spending thousands of
12 dollars but that's how you want to do it; do
13 it. But we'll resolve it ultimately.

14 And the ultimate resolution may be
15 entirely different than what you think. I'm
16 just warning you of that. If it's ultimately
17 determined that this case is as frivolous as
18 people are maintaining and I'm not suggesting
19 it is because I don't know yet, but if it
20 ultimately is determined, then you're going to
21 bear the significant cost of this litigation.

22 Anything else, folks?

23 MS. KOURIL: No, thank you,
24 your Honor. No, your Honor.

25 THE COURT: Mr. Novak?

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1 MR. NOVAK: And we're going to
2 conclude this before we consider the
3 amendment. That's still where we're at.

4 THE COURT: That's correct.

5 MR. NOVAK: Are we also -- is it
6 realistic to consider at that point merging
7 these cases?

8 THE COURT: I think it probably is.
9 It probably makes sense to consolidate it.

10 MR. NOVAK: Because what I think is
11 going to happen is the amended complaint is
12 going to mirror the new complaint.

13 THE COURT: The what complaint?

14 MR. NOVAK: The amended complaint that
15 I would propose in this case is going to
16 mirror the actual complaint of the other case
17 which the same defendants have been served.

18 THE COURT: Okay. Well, we'll address
19 that after we address the other issue; all
20 right?

21 MR. NOVAK: All right.

22 THE COURT: Anything else?

23 MR. NOVAK: No.

24 MS. KOURIL: No, sir.

25 THE COURT: Thank you.

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1 MS. KOURIL: Thank you, your Honor.

2 MR. NOVAK: The hearing, I am -- I'm
3 sorry, the examination then would be here at
4 the Court?

5 THE COURT: Yes, it's going to be here
6 at the courthouse at the direction of the
7 referee. Once I appoint a referee, he or she
8 will be in touch with you. They'll schedule
9 it. And set up the parameters for the
10 deposition.

11 MR. NOVAK: Thank you.

12 THE COURT: Thank you.

13 MS. KOURIL: Thank you.

14 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 9th day of December, 2002.

Rosalie Lombardi

Rosalie Lombardi
Transcription Plus II

Defendant's Exhibit E

BEFORE: WILLIAM D. WALL

DATE: 3/06/03

F&D

UNITED STATES MAGISTRATE JUDGE

TIME: 10:30 a.m.

DOCKET NO. CV 01-3566

ASSIGNED JUDGE: Hurley

CASE NAME: Novak v. Active Window Publications

CIVIL CONFERENCE

Initial _____ Status X Settlement _____ Pretrial _____

Other: _____

APPEARANCES: Plaintiff Robert Novak

Defendant Cynthia Kouril

SCHEDULING:

1. The next Status conference will be held on May 2, 2003 at 11 a.m.

THE FOLLOWING RULINGS WERE MADE: The court's order of December 5, 2002 is vacated to the extent that the court was to appoint a referee. A referee will not be appointed. The plaintiff's continued deposition will be conducted in this courthouse on March 28, 2003 beginning at 10 a.m. Defendant shall submit Schedule A of the proposed protective order within 7 days. The plaintiff shall supply documents responsive to the original demand, including tax returns for the years covered in the complaint, within 14 days. All other applications contained in the plaintiff's January 22, 2003 letter motion are DENIED.